

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

VICTOR TAGLE,

Case No. 2:15-CV-2082 JCM (VCF)

Plaintiff(s),

ORDER

V.

STATE OF NEVADA,

Defendant(s).

Presently before the court is the matter of *Tagle v. State of Nevada et al.*, case number 2:15-cv-02082-JCM-VCE.

On November 21, 2019, the court received a referral notice from the Ninth Circuit Court of Appeals, referring this matter to the court “for the limited purpose of determining whether *in forma pauperis* status should continue for this appeal or whether the appeal is frivolous or taken in bad faith.”

I. Background

On October 30, 2015, plaintiff Victor Tagle (“Tagle”) filed an application to proceed *in forma pauperis* and a complaint, alleging a litany of constitutional claims including violations of, *inter alia*, the Equal Protection Clause, Due Process Clause, Eighth Amendment, and First Amendment. (ECF No. 1, 1-1). The court granted the application to proceed *in forma pauperis*; screened the complaint; and allowed a due process claim, two retaliation claims, and an outgoing mail violation claim to proceed. (ECF Nos. 7, 18).

The defendants who remained in the case after the court's screening moved for summary judgment on August 22, 2019. (ECF No. 91). The court granted the defendants' motion on October 24, 2019, and dismissed Tagle's claims. (ECF No. 102). Tagle appealed. (ECF No. 104).

1 Now, the Ninth Circuit has referred this case to the court for the limited purpose of
2 determining if Moraga's *in forma pauperis* status should continue for his appeal.

3 **II. Legal Standard**

4 28 U.S.C. § 1915(a)(3) provides that “[a]n appeal may not be taken *in forma pauperis* if
5 the trial court certifies in writing that it is not taken in good faith.” The good faith standard is
6 satisfied when an individual “seeks appellate review of any issue not frivolous.” *Coppedge v.*
7 *United States*, 369 U.S. 438, 445 (1962). For the purposes of section 1915, an appeal is frivolous
8 if it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325
9 (1989). A district court may revoke an individual’s *in forma pauperis* status for his appeal if it
10 finds that the appeal would be frivolous. *See Hooker v. American Airlines*, 302 F.3d 1091, 1092
11 (9th Cir. 2002).

12 **III. Discussion**

13 For the reasons set forth in the court’s October 23, 2019, order granting defendants’ motion
14 for summary judgment (ECF No. 102), the court finds that any appeal of that order would not be
15 taken in good faith because the issues therein lack any arguable basis in law or fact. As to count
16 16 against defendant Fajota, which alleged retaliation, Tagle failed to exhaust his administrative
17 remedies. *Id.* at 6–8. Tagle’s daily transaction summary expressly belies his due process claim
18 against Fajota. *Id.* at 8–9. Finally, Tagle failed to adduce evidence to support his outgoing mail
19 violation claim against defendant Salazar. *Id.* at 9–10. Thus, Tagle’s appeal is frivolous.

20 The court therefore revoked Tagle’s *in forma pauperis* status.

21 **IV. Conclusion**

22 Accordingly,

23 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that Tagle’s *in forma pauperis*
24 status is REVOKED.

25 DATED November 25, 2019.

26 
27

28 UNITED STATES DISTRICT JUDGE